

BEFORE THE  
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD  
STATE OF CALIFORNIA

In the Matter of:

HEATHER VANN and JAMES VANN and  
JONATHAN VANN  
dba ATWATER IRON & METAL, INC.,  
OPERATORS and HEATHER VANN,  
PROPERTY OWNER

Respondent.

WTF No. 2000-16AC

OAH No. N2000100224

**DECISION**

On November 20, 2000, in Sacramento, California, Administrative Law Judge John D. Wagner, State of California, Office of Administrative Hearings, heard this matter.

Complainant was represented by Lynda Williams, Staff Counsel, California Integrated Waste Management Board.

Respondents were represented by respondents Heather Vann and Jonathan Vann.

Evidence was received, the record was closed and the matter was submitted.

**FACTUAL FINDINGS**

1. The California Integrated Waste Management Board (CIWMB) has authority to inspect, permit, regulate and conduct enforcement actions against Waste Tire Facilities (WTFs) within the State of California under section 42800 et. seq. of the Public Resources Code (Code) and attendant regulations contained in Title 14 of the California Code of Regulations (Regulations).

2. Heather Vann, facility owner, and James and Jonathan Vann, co-managers and sons of Heather Vann, are operators of Atwater Iron & Metal, Inc.

They are responsible for the waste tires being stored at 860 Applegate Road, Atwater, California. This site is not a permitted WTF.

3. As recently as March 1, 2000, the facility was storing in excess of 8,600 waste tires on site. On November 17, 2000, the facility was still storing 3-4,000 tires on site.

### History

4. On October 22, 1998, Keith Cambridge of the CIWMB conducted a waste tire facility inspection of the facility and found that at least 7,200 waste tires were located on site. The tires were piled in four or five large piles. The piles included miscellaneous scrap pieces of iron, including vehicle wheels.

5. On October 23, 1998, a Letter of Violation was sent to Jack Vann by Mr. Cambridge. At the time, Jack Vann, Heather Vann's husband, was a co-owner of the facility. The Letter of Violation requested that a corrective action plan (plan) be submitted to the CIWMB by November 15, 1998, for removal of the waste tires. No response was received to this letter.

6. On November 16, 1998, a Warning Letter was sent to Mr. Jack Vann by Mr. Cambridge. The letter requested that a plan be submitted to the CIWMB by December 7, 1998.

7. On December 7, 1998, a letter from Steven Vann, Manager, was faxed to Mr. Cambridge. The letter indicated that the facility would try to remove all waste tires within six months.

8. On December 15, 1998, Mr. Cambridge sent a letter to Steve Vann. This letter indicated that the facility's "clean-up" plan of December 7, 1998 was acceptable and all waste tires must be removed from the facility by May 30, 1999. This letter also indicated that if the tires were not removed by this date, a Clean-up and Abatement Order may be issued.

9. On August 3, 1999, Keith Cambridge conducted a facility visit and found more than 7,200 waste tires still remained on site.

10. On September 16, 1999, Clean-up and Abatement Order No. 99-100 was issued by the CIWMB to Jack Vann, President of the facility corporation. This order required Mr. Vann to remove all waste tires from the facility by November 30, 1999. A waste tire removal and operation plan contained within the order required that destination receipts and waste tire manifests be submitted to the CIWMB by December 7, 1999.

11. On December 7, 1999, Keith Cambridge conducted another site visit of the facility. At that time, there were still approximately 8,600 waste tires on site.

12. On March 1, 2000, Keith Cambridge conducted a site visit of the facility. He found that approximately 8,600 waste tires remained on site. At this time, the facility was being managed by James Vann.

13. After the facility visit of March 1, 2000, an administrative complaint was served on the facility. At the time of serving the complaint, it was learned that Jack Vann died in April 2000. Thereafter, on June 10, 2000, a Settlement Agreement and Mutual Compromise was entered into with James Vann. This agreement required the facility to pay a penalty of \$400. If this penalty was not paid within 90 days, the amount of the penalty would increase to \$20,000. The agreement also required the facility to obtain a minor waste tire facility permit if the amount of waste tires on site exceeded 500.

14. On September 6, 2000, Jonathan Vann sent a letter to Keith Cambridge. The letter was intended to “resolve the issue of removing the 7,000 tires on our site....” The letter noted that the facility was reorganizing its finances and structure as a result of Jack Vann’s death. It requested a continuance of 12 months to remove waste tires and avoid penalties.

15. On September 13, 2000, Mr. Cambridge replied to Jonathan Vann’s letter and stated that an extension could not be granted because CIWMB had been working with the facility since October 1998 to resolve the issue. An amended administrative complaint was issued on September 28, 2000. This hearing followed.

#### Specific Violations

16. In the operation of the facility, Heather Vann, James Vann and Jonathan violated the following sections of the regulations:

A. Section 18420 – This section requires that the operating of a WTF obtain a Permit from the CIWMB. The Vann’s do not have a Permit issued by the CIWMB.

B. Section 17351 – This section lists specific equipment and water supply that must be available at a WTF for fire prevention. The Vann’s do not have the equipment or water supply on site, as required by this section.

C. Section 17353 – This section lists requirements for the prevention of breeding and harborage of mosquitoes, rodents and other vectors at a WTF. The Vann’s have not taken measures to prevent the breeding and harborage of mosquitoes, rodents and other vectors at the facility, as required by this section.

D. Section 17354 – This section lists the requirements for the safe storage of waste tires at a WTF. The Vann’s have not taken any steps to provide safe storage of waste tires at the facility, as required by this section.

17. Facility operators, Heather Vann, James Vann and Jonathan Vann, and Heather Vann as the facility owner, are in violation of Clean-up and Abatement Order No. 99-100 issued to Jack Vann by the CIWMB on September 16, 1999. Said order directed Mr. Vann to remove all waste tires by November 30, 1999. Copies of destination receipts and waste tire manifests were to be submitted to the CIWMB on or before December 7, 1999. The Vanns have not complied with these requirements. Their failure to clean-up, abate or otherwise take remedial action at the facility as ordered is a violation of section 42845 of the Code.

18. The above violations are mitigated by the following. In the past, Jack Vann was the primary operator of the facility. His wife, Heather Vann, was not active in its operation. At various times in the past, the Vann's sons have helped their father in the operation of the facility. Prior to his death, Jack Vann was sick for an extended period of time. The facility operation was not very profitable prior to his death. It has become a little more profitable recently.

Since Mr. Vann's death, Heather Vann, Jonathan Vann and another son have become more active in the operation of the facility, along with James Vann. Heather Vann became aware of the waste tire problem in approximately September 2000. Tires are now being removed from the facility. More time and money is being devoted to their removal. At the time of the hearing, Heather Vann hoped that the waste tires would be removed within 30 days. In view of the number of tires and the facility's resources, this hope is optimistic.

## LEGAL CONCLUSIONS

1. Heather Vann, James Vann and Jonathan Vann, as operators of the facility, and Heather Vann as owner of the facility, are liable for civil penalties pursuant to sections 42850(b) and 42850.1(b)(1) for violations of sections 18420, 17351, 17353 and 17354 of the regulations, as set forth in Finding 16; and section 42845 of the Code, as set forth in Finding 17.

2. In view of the death of Jack Vann and the mitigation set forth in Finding 18, and considering the nature, extent and gravity of the violations in the context of said mitigation, the civil penalty liability to be imposed for the above violations should be as set forth in the following order.

## ORDER

Wherefore, the following Order is hereby made:

1. Heather Vann, James Vann and Jonathan Vann, as operators, and Heather Vann as facility owner, shall pay a civil penalty of \$2,000 to the California Integrated Waste Management Board within 90 days of this date.
2. Said civil penalty shall be increased to \$20,000 if the number of waste tires stored on site at the facility is not clearly reduced to less than 500, as tallied by a CIWMB investigator, within 60 days of this date, or if the above civil penalty of \$2,000 is not paid within 90 of this date.
3. An appropriate waste tire facility permit shall be obtained for the facility if, after having reduced the number of waste tires on site to less than 500, more than 500 tires are stored on site at the facility in the future. Failure to obtain such a permit prior to storage of more that 500 waste tires on site shall result in a civil penalty of \$20,000.
4. This order shall become effective and final on this date.

DATED: \_\_\_\_\_

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JOHN D. WAGNER  
Administrative Law Judge  
Office of Administrative Hearings